

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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Attachment No. 2

INITIAL STATEMENT OF REASONS**CALIFORNIA CODE OF REGULATIONS**

TITLE 8: Chapter 4, Subchapter 4, Subchapter 4, Article 4, Section 1532.2 of the Construction Safety Orders; Chapter 4, Subchapter 7, Article 110, Sections 5203 and 5206 of the General Industry Safety Orders; and Chapter 4, Subchapter 18, Article 4, Section 8359 of the Ship Building, Ship Repairing, and Ship Breaking Safety Orders

Carcinogen Report of Use Requirements for Chromium VI**SUMMARY**

On February 28, 2006, Federal OSHA adopted general industry, construction and ship building standards regulating employee exposure to chromium (VI). Federal OSHA took this action because chromium (in any form or compound that has a valence of positive six) has been determined to be carcinogenic.

On August 17, 2006, the Occupational Safety and Health Standards Board (Board) adopted new Sections 1532.2, 5205, and 8359, chromium (VI) that were equivalent and nearly identical to the Federal OSHA standards. The California Occupational Carcinogen Control Act in the Labor Code mandates the Board to adopt and the Division of Occupational Safety and Health (Division) to regulate carcinogens in several specific ways. In particular, Labor Code Section 9030 mandates the adoption of one or more standards requiring employers to submit written reports of use of or release of carcinogens. Thus, until 1999, all carcinogen standards adopted by the Board contained a subsection on reporting requirements. Thereafter, all reporting requirements were condensed into a new standard, Title 8, Section 5203, and a subsection referring employers to Section 5203 was left in place in each of the then existing 19 specific carcinogen standards.

The current chromium standards do not include a reporting requirement referenced in the Labor Code since the equivalent federal standards have no such reporting requirements.

SPECIFIC PURPOSE AND FACTUAL BASIS OF PROPOSED ACTION

The specific purpose of this proposal is to comply with the mandate of Labor Code Section 9030. The Board must require each employer using any carcinogen to report in writing use of a carcinogen or any potentially hazardous release of the carcinogen that may expose employees.

The purpose of the proposed revisions to Title 8, Sections 1532.2, 5203, 5206, and 8359 are: (1) to add the carcinogen reporting requirements mandated by Labor Code Section 9030 to Title 8, Section 5203 with respect to chromium (VI) use covered by Sections 1532.2 and 8359; (2) to provide the regulated public a cross reference in Sections 1532.2, 5206, and 8359 to Section 5203; and (3) to add the appropriate Labor Code authority and reference citations.

The proposed revisions of Section 5203 would add Sections 1532.2 and 8359 to the list of Title 8 sections covered in the definition of regulated carcinogen in Section 5203(b). The definition for regulated carcinogen in Section 5203(b) automatically captures Section 5206 as it is part of Article 110 of Title 8, as all sections of this Article are defined as regulated carcinogens. Therefore, Section 5206 does not have to be specifically identified in the definition's list of covered regulated carcinogens.

The proposed rulemaking would also amend Section 5203(c)(2) by specifying the circumstances in which report of use is required for regulated carcinogens that do not require the establishment of regulated areas. Chromium (VI), as regulated by Section 5206 for the general industry sector, has a regulated area requirement triggered by exposure above the permissible exposure limit. However, Section 1532.2 for the construction industry and Section 8359 for the ship building, ship repairing, and ship breaking industry do not require the establishment of regulated areas.

The current language of Section 5203(c)(2) requires report of use of chromium (VI) for general industry regulated by Section 5206. To be consistent with the PEL trigger for the regulated areas in Section 5206, a new subsection (A) is added to Section 5203(c)(2) and is necessary to require reports of chromium (VI) use only when the PEL may be exceeded. Exceeding the PEL is the trigger for establishing a regulated area and hence for reporting use in the general industry standard for chromium (VI) and for most other regulated carcinogens.

To retain the current language that requires reports of use above 0.1% for other regulated carcinogens, the existing requirement is moved verbatim from existing Section 5203(c)(2) to new Section 5203(c)(2)(B). In addition, the words "all other" are included in this subsection following the word "For," so it would be clear that this requirement applies to circumstances not covered by proposed Section 5203(c)(1) and (c)(2)(A).

The proposed amendments of Sections 1532.2, 5206, and 8359 would add clarifying cross-referencing subsections m, o and m, respectively, titled "Reporting requirements" that refer to Section 5203.

Finally, this proposal would change the "NOTES" at the end of Sections 1532.2, 5206 and 8359 by adding the appropriate Occupational Carcinogen Control Act Labor Code sections to the list of authorities and references cited.

The proposed amendments of this proposal are necessary to comply with the Labor Code mandate to report the use of chromium (VI) as regulated by Sections 1532.2 and 8359.

DOCUMENTS RELIED UPON

None.

REASONABLE ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC IMPACT ON SMALL BUSINESSES

No reasonable alternatives were identified by the Board and no reasonable alternatives identified by the Board or otherwise brought to its attention would lessen the impact on small businesses.

FINDING OF NECESSITY FOR REPORT REQUIREMENT

The Board finds that it is necessary for the health, safety and welfare of the people of the state that these reporting requirements apply to business. Labor Code Section 9030 requires a report of use and potentially hazardous release of all regulated carcinogens. The recent adoptions of Sections 1532.2, 5206 and 8359 have added chromium (VI) to the list of regulated carcinogens. Reporting use of chromium (VI) was not considered when these new standards were adopted. Labor Code Section 9030 requires the Board to adopt reporting requirements for all regulated carcinogens. Therefore, this proposal would fulfill this obligation.

SPECIFIC TECHNOLOGY OR EQUIPMENT

This proposal will not mandate the use of specific technologies or equipment.

COST ESTIMATES OF PROPOSED ACTION

Costs or Savings to State Agencies

No costs or savings to state agencies will result as a consequence of the proposed action.

Impact on Housing Costs

The Board has made an initial determination that this proposal will not significantly affect housing costs.

Impact on Businesses

The Board has made a determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. The cost of complying with Section 5203 has been found to be insignificant by businesses currently reporting use for other carcinogens

covered by Section 5203. Therefore, the cost of complying with similar levels of reporting for chromium (VI) should also be insignificant.

Cost Impact on Private Persons or Businesses

See “Impact on Businesses.”

Costs or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or school districts are required to be reimbursed. See explanation under “Determination of Mandate.”

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

This proposal does not impose nondiscretionary costs or savings on local agencies.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed amendments do not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed amendments will not require local agencies or school district to incur additional costs in complying with the proposal. Furthermore, the amendments do not constitute a “new program or higher level of service of an existing program with the meaning of Section 6 of Article XIII B of the California Constitution.”

The California Supreme Court has established that a “program” within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

The proposed amendments do not require local agencies to carry out the governmental function of providing services to the public. Rather, these revisions require local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, these amendments do not in any way require local agencies to administer the California Occupational Safety and Health program. (See City of Anaheim v. State of California (1987) 189 Cal.App.3d 1478.)

The proposed amendments do not impose unique requirements on local governments. All employers - state, local and private - will be required to comply with the prescribed standards.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendments may affect small businesses. However, no economic impact is anticipated.

ASSESSMENT

The adoption of the proposed amendments to these standards will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

ALTERNATIVES THAT WOULD AFFECT PRIVATE PERSONS

No reasonable alternatives have been identified by the Board or have otherwise been identified and brought to its attention that would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.